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[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

January 23, 1939.

CHEONG CHARK vs. GAMMON (Malaya) Ltd.

[SINGAPORE SUIT No. 466 of 1937]

Contractor and Sub-contractor—Labour Ordinance (Cap. 69), sects. 2 and 45—"Labour"—Functions of Controller of Labour in disputes between Master and Servant—Contractor's letter to Controller enclosing copy of disparaging letter addressed to Sub-Contractor—Libel of sub-contractor in way of his trade or profession—Publication of—Qualified Privilege—Malice.

A firm of contractors, who held the principal contract from the Royal Air Force, employed a sub-contractor to supply the labour-force requisite for the erection of certain aeroplane-sheds. Before the date (10th July 1937) stipulated for the completion of the sub-contract had expired, they cancelled and determined, on the 11th June 1937, the sub-contract, on the alleged ground that the sub-contractor's work had been unsatisfactory. The sub-contractor then, by repeated letters up to and including the 7th July 1937, applied to the Contractors for the computation of the value of his work and payment over of what was due to him. The Contractors replied on the 8th July to the last-mentioned letter of the 7th July 1937, setting forth in detail their contentions on the various items, and concluding thus:—

> " We are sending copies of your letter under reply and this letter to the Protector of Chinese, as, owing to the extremely unsatisfactory way you have proceeded with the contracts given you, your complete disregard of all our requests and instructions, complaints received from your labour of non-payment of wages, and the breaking of your contract through sub-letting and non-completion, we are strongly of opinion that you should be struck off the list of sub--contractors."

On the 9th July 1937, they also wrote the following letter to the Controller of Labour (Chinese), Singapore, and enclosed therein a copy of the "essential correspondence" (including their abovementioned letter of the 8th July) that had passed between them and the Plaintiff:—

"9th July, 1937.

" The Assistant Controller of Labour (Chinese),
Chinese Protectorate,
Singapore.

Sir,

Sub-contractor Cheong Chark.

We have the honour to forward herewith the essential Correspondence between the abovenamed contractor and this Company.

During the past two years we have awarded him several contracts at the R.A.F. Base, and latterly entirely on account of his "hard luck" stories and in the hope that he would improve.

However the Air Ministry finally warned us that neither progress nor workmanship were satisfactory, and we were forced to take drastic action. Requests and instructions to Cheong Chark resulted in nothing more than fantastic claims from him. Finally he refused to accept payment for work done, and his labour struck work. We had no option but to cancel his contract and carry on ourselves. We took over his liabilities to his labour and food supplier, and are now working direct with the labour.

We draw your attention for your earnest consideration to the last paragraph of our letter to Cheong Chark, No. S.13477 dated 8th July.

We have the honour to be,
Sir,
Your obedient servants,
(Sd.) H. E. Wright."

In an action by the Plaintiff against the Defendants for damages for libel in the way of his trade or profession, the latter pleaded privilege.

Held—(1) the Defendants' letter of the 8th July to the Plaintiff was published to the Controller by means of the copy that they enclosed in their letter dated the 9th July to the latter officer, and was defamatory of the Plaintiff: (2) as the letter was not the result of the Controller's request for information nor of the Defendants' desire to appeal to the authorities under the Labour Ordinance, it was not protected by the "qualified privilege" claimed for it, and, in fact, in view of the high-handed action of the Defendants in cancelling the Plaintiff's contract, and in writing the letter in question under annoyance when pressed by the Plaintiff for settlement of his account, was malicious.

TRIAL OF ACTION.

This was an action for damages for (a) the contractors' wrongful determination of their sub-contractor's contract to supply labourers, and (b) for libel.

The Plaintiff and the Defendants were both building-contractors, the Plaintiff being engaged by the Defendants as sub-contractor for supplying labourers for the erection of two "C-type" aeroplane-sheds for the Royal Air Force, Seletar, for which the Defendants, as principal contractors to the War Department, supplied the materials. The Plaintiff's date of completion, originally fixed at the 31st May 1937, had by subsequent arrangement been extended by the Defendants to the 10th July 1937.

The Plaintiff, by his Statement of Claim alleged that the Defendants (1) on the 11th June 1937, by letter to him of that date wrongfully cancelled and terminated his sub-contract, and then expelled him from the site of the works at Seletar, and prevents him from removing therefrom his tools, account-books, and other belongings; (2) on the 9th July 1937, with the object of injuring him, wrote to the Controller of Labour (Chinese), Singapore, a letter making false and malicious allegations against him (the plaintiff), and requesting the Controller to strike his (the Plaintiff's) name off the List of sub-contractors—whereby the Plaintiff was injured in his profession and business, and had suffered in his credit and reputation.

The Defendants, by their Defence, pleaded that they were justified in cancelling the sub-contract on the 11th June 1937, because the Plaintiff failed to execute and complete the work

to their satisfaction (para. 4). They admitted (para.10) having written to the Controller on the 9th July 1937 to inform him of their having cancelled the sub-contract, but denied having requested him to strike the Plaintiff's name off the List of sub-contractors, or having acted maliciously, or that the Plaintiff had been injured, as alleged, or at all. They also pleaded that the said communication was privileged.

At the trial, the Defendants (by the evidence of their Secretary and Engineer) alleged that, as the strike of the Plaintiff's labourers on the 10th June demanded immediate action on the Defendants' part, they had not the time, and didn't consider it necessary, to appeal to the Controller of Labour (Chinese): but being in constant touch with him officially as regards sub-contractors generally, and as he at times received complaints and asked Contractors to withhold moneys due to sub-contractors, the Defendants considered it their duty to inform him of the course of correspondence and of their having terminated the Plaintiff's sub-contract, which they did by their letter of the 9th July.

The correspondence between the parties showed that the Plaintiff, subsequent to his receipt of the Defendants' letter of the 11th June 1937 determining his contract, wrote to them repeatedly up to and including the 7th July 1937 pointing out his straitened circumstances, and applying for computation and payment of what was due to him. He eventually received the Defendants' reply dated the 8th July, which, after setting out in detail their contentions as to the items of mutual account, concluded thus:—

> "We are sending copies of your letter under reply and this letter to the Protector of Chinese, as, owing to the extremely unsatisfactory way you have proceeded with the contracts given you, your complete disregard of all our requests and instructions, complaints received from your labour of non-payment of wages, and the breaking of your contract through sub-letting and non-completion, we are strongly of opinion that you should be struck off the list of sub-contractors."

The next day, the 9th July 1937, the Defendants addressed the following letter to the Controller of Labour (Chinese), Singapore, and enclosed therein a copy of the "essential correspondence" (including their letter of the 8th July) that had passed between them and the Plaintiff:—

"9th July, 1937.

"The Assistant Controller of Labour
(Chinese)
Chinese Protectorate,
Singapore.

Sir,

Sub-contractor Cheong Chark.

We have the honour to forward herewith the essential correspondence between the abovenamed contractor and this Company.

During the past two years we have awarded him several contracts at the R.A.F. Base, and latterly entirely on account of his "hard luck" stories and in the hope that he would improve.

However the Air Ministry finally warned us that neither progress nor workmanship were satisfactory, and we were forced to take drastic action. Requests and instructions to Cheong Chark resulted in nothing more than fantastic claims from him. Finally he refused to accept payment for work done, and his labour struck work. We had no option but to cancel his contract and carry on ourselves. We took over his liabilities to his labour and food supplier, and are now working direct with labour.

We draw your attention for your earnest consideration to the last paragraph of our letter to Cheong Chark, No. S. 13477 dated 8th July.

We have the honour to be,
Sir,
Your obedient servants,
(Sd.) H.E. Wright."

The trial Judge held that the Plaintiff's contract had been wrongfully determined by the Defendants.

The present report is confined to the issue of libel. *de Mello* for the Plaintiff.—The decision on the issue of libel, or no libel, depends to a large extent on Your Lordship's finding on the preliminary issue as to whether the termination of the Plaintiff's contract was lawful or unlawful. Assuming that that finding is in favour of the Plaintiff, the Defendants' letter of the 9th July to the Controller refers back to, and is to be read with, their letter of the 8th July addressed to the Plaintiff. Though the original letter of the 8th July was not published, there was publication of the copy of it enclosed in the letter of the 9th July. Next, the Defendants' claim to privilege—"qualified privilege"—might possibly have been justified, had they appealed to the Controller promptly, under section 45, Labour Ordinance (Cap. 69) at the critical time of the strike and the termination of the contract on the 11th June. Neither the occasion nor the communication was privileged in the circumstances. The definitions of "labourer' in sections 2 and 45 (7) of that Ordinance include a supervisor and sub-contractor. Lastly, if it be necessary to prove malice, it is clearly proved by the Defendant's arbitrary,

and high-handed determination of the Plaintiff's contract, and by the fact that they would not have made any complaint, to the Controller had the plaintiff acquiesced in his treatment and not persisted in pressing for settlement of his account.

Burke for the Defendants.—The evidence of the Defendant Company's officers shows that the letter of the 9th July was written in execution of a duty. The Controller of Labour expects employers of labour to keep him notified of their course of dealing with sub-contractors. The letter was a "privileged communications", and no malice has been shown. Absence of malice is further proved by the Defendants' legitimate cancellation of the Plaintiff's sub-contract.

The following written judgment was delivered on the 23rd January 1939 by Horne J., who after dealing with the other issues in the action, proceeded as follows:—

There remains the issue as to the alleged libel. As soon as the Plaintiff received the letter of the 11th June 1937 cancelling the contract, he appears to have objected and written letters making the claims he has brought in this Court, some of which have been substantiated. Apart from any question of breach of contract there existed a dispute as to items of extras or of underpayment. In reply to the Plaintiff's letter of the 7th July, the Defendants write disputing these claims, except some small items they are still enquiring into, which will amount to a further credit of $250 approximately. They also claim to deduct 25% of the amount under clause 5 of the conditions. They wound up with the paragraph beginning:—

> "We are sending copies of your letter under reply and this letter to the Protector of Chinese.....

Then the letter enclosing the above is sent to the Protector of Chinese (His Lordship read the letter, set forth above, of the 9th July 1937, and proceeded).

The statement "We took over his liabilities to his labour and his food contractors" is plainly untrue, for they say, in their letter of the 11th June, they are setting off the sums paid against sums due under the contract.

The words published to be Protector contained in the penultimate paragraph of the letter of 8th July and in the letter to the Protector of the 9th July are capable of a defamatory meaning. They are a clear attack upon the Plaintiff's reputation.

The Defendants plead privilege. There was no request by the Protector for information. The Defendants had dealt with the situation arising on the 11th June without any recourse to the authorities, and up to the 8th July all that the Plaintiff had asked for was a settlement of his account. The Defendants are not submitting the matter in dispute in order that the Controller of Labour should deal with them.

I fail entirely to understand how these statements can be merely statements stating reasons for not complying with the demands made by the Plaintiff to which "qualified privilege" would *prima facie* attach. Even assuming there was duty (though there is no real evidence of that) to make these communications to the Controller of Labour, then I should find that they were malicious. They misrepresent the facts, and are a plain request to the Controller "to strike the plaintiff off the List of Sub-contractors." They do not appear to me to be made in good faith, but to be the result of annoyance because the Plaintiff would not come to terms. The Plaintiff admits that he had been to the Controller and had been told to take his claim to Court. When he so went is not clear. But even assuming it was before the letter and enclosures were sent to the Controller of Labour, there was no request by him for information even.

I find that the libel is proved. Damages on this issue are difficult to assess. There is no evidence that the plaintiff was struck off the list. Apparently the Controller took no notice of the matter. The publication is of a limited extent, and all that has been put forward by way of defence is a plea of privilege. The Plaintiff does not, and, of course, need not, prove that he has suffered any damage as the result of the words complained of, for the law presumes that *some* damage will flow in the ordinary course of things from the mere invasion of his absolute right to reputation. At the same time, the words are not likely to do him much harm when published to a public officer who is not likely to take them too seriously. I assess the damages at $100.

Solicitor for the Plaintiff—*A. de Mello.*

Solicitors for the Defendants—*John .G. Campbell & Co.*

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

February 17, 1939.

RE SEAH PENG LIAT.

EX PARTE SEAH ENG KEONG and SEAH ENG TONG.

[SINGAPORE BANKRUPTCY No. 328 of 1938]

Bankruptcy—adjudication order—refusal to make order—Court's discretion—grounds for exercise of Bankruptcy Ordinance (Cap. 45) S. 6 (3).

Discretion of the Court to refuse to adjudicate a debtor bankrupt may be exercised in favour of the debtor in a proper case such as a case where an adjudication